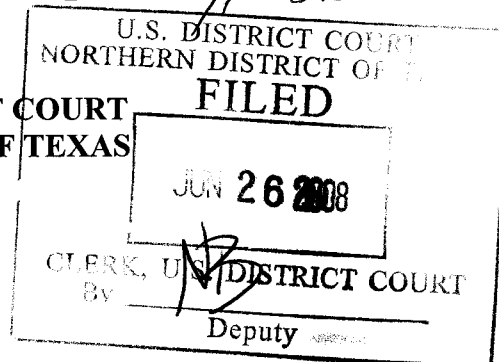


✓  
K  
ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



CHEERLEADING COMPANY

*Plaintiff,*

v.

VARSITY BRANDS, INC.;  
NSG CORPORATION; and  
VARSITY SPIRIT FASHIONS

*Defendants.*

CIVIL ACTION NO. \_\_\_\_\_  
**3-08CV1087-K**

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**PLAINTIFF'S ORIGINAL COMPLAINT**

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Plaintiff Cheerleading Company ("CC") files this Original Complaint against Defendants Varsity Brands, Inc., NSG Corporation, and Varsity Spirit Fashions (collectively, "Defendants").

**I. INTRODUCTION**

1. CC brings this action pursuant to 28 U.S.C. § 2201 for a declaratory judgment to the effect that Defendants do not have a valid copyright over the designs of uniforms upon which Defendants claim CC is infringing.

**II. JURISDICTION**

2. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 and is brought to declare CC's rights regarding its business of marketing, offering for sale and selling certain cheerleading uniforms. Original jurisdiction over this cause of action is conferred upon this Court pursuant to 28 U.S.C. §§ 1331 and 1338 (a). As more fully set forth herein, Defendants have threatened Plaintiff with an action for damages and injunctive relief arising out of Plaintiff's alleged infringement of alleged copyrights. Defendants have also threatened to

bring claims for Federal unfair competition and common law unfair competition. These threats have created a reasonable apprehension on the part of CC that it will face such a lawsuit. Accordingly, there is an actual controversy between the parties.

3. Venue is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400 because Defendants have conducted business in the state of Texas and in this judicial district and have purposefully availed themselves of the benefits and laws of the State of Texas.

### **III. PARTIES**

4. Plaintiff Movie Show Video Management, Inc. d/b/a Cheerleading Company is a Texas corporation with its principal place of business in Dallas, Texas.

5. Defendant Varsity Brands, Inc. is a Delaware corporation that may be served by and through its registered agent CT Corporation System 800 S. Gay Street, Suite 2021 Knoxville, Tennessee 37929-9701.

6. Defendant NSG Corporation is a Delaware corporation that may be served by and through its registered agent CT Corporation System 350 North St. Paul Street Dallas, Texas 75201.

7. Defendant Varsity Spirit Fashions is a Minnesota corporation that may be served by and through its registered agent Jeffrey G. Webb 6745 Lenox Center Court, Suite 300; Court Memphis, Tennessee 38115.

### **IV. FACTS**

8. CC manufactures and sells cheerleading uniforms, apparel, and accessories. On or about June 2, 2008, Defendants began alleging that they had acquired copyrights for the designs of 16 cheerleading uniforms, and alleging that CC was infringing upon Defendants' intellectual property and violating the Copyright Act of 1976, 17 U.S.C. §§ 101 et seq.

9. CC requested that Defendants provide CC with any copies of Certificates of Registration for the uniforms over which Defendants allege to have a valid copyright. Defendants refused, and reiterated its demands and threats.

10. Accordingly, CC files this action in this district, expressly denying that CC has committed any such infringement. Jurisdiction and venue are proper in this Court to quickly resolve this controversy, which is in the interest of all parties to the lawsuit.

**V. FIRST COUNT**  
**(Declaratory Relief, Pursuant to 28 U.S.C. § 2201)**

11. An actual controversy has arisen between CC and Defendants regarding whether Defendants own any valid copyrights over the design of certain uniforms, and whether CC is committing any actionable copying of any such valid copyright.

12. This controversy is real and ongoing. Defendants began asserting that CC was committing actionable copying of Defendants' alleged copyrights on or about June 2, 2008; however, Defendants have refused to provide copies of any Certificates of Registration for any alleged copyrights.

13. Accordingly, CC seeks a declaration that Defendants do not have a valid copyright over the clothing designs of certain uniforms because the uniforms are useful articles for which copyright protection is not available. Therefore, CC further seeks a declaration that CC has not committing any actionable copying or infringing of any valid copyright owned by Defendants or otherwise violated any rights belonging to Defendants.

14. Such a declaration will definitively clarify the legal relations between the parties.

**VI. PRAYER FOR RELIEF**

WHEREFORE, CC prays for the following relief:

- (1) A declaration that Defendants do not have any valid copyrights over the clothing designs of certain uniforms because the uniforms are not subject to copyright protection;
- (2) A declaration that CC has not committing any actionable copying of any valid copyright owned by Defendants;
- (3) CC's costs incurred herein, including all of CC's reasonable attorneys' fees and expenses; and
- (4) Any and all such other and further relief (at law or in equity) to which the Court determines CC is justly entitled.

Dated: June 26 2008

Respectfully submitted,



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## CIVIL COVER SHEET

3-08CV1087-K

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

CHEERLEADING COMPANY'S

(b) County of Residence of First Listed Plaintiff DALLAS  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

MOLLY RICHARD, RICHARD LAW GROUP, 8411  
PRESTON ROAD, SUITE 890, DALLAS, TX 75225  
214.206.4300, 214.206.4330 FAX

## DEFENDANTS

VARSITY BRANDS, INC., NSG CORPORATION AND  
VARSITY SPIRIT FASHIONS

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                                   | DEF                                   |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input type="checkbox"/> 385 Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 2201

Brief description of cause:

DECLARATORY JUDGMENT REGARDING COPYRIGHT OWNERSHIP

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

## VIII. RELATED CASE(S) PENDING OR CLOSED

(See instructions):

JUDGE

DOCKET NUMBER

DATE

June 26, 2008

SIGNATURE OF ATTORNEY OF RECORD

Molly Richard

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE